

FEDERAL ADVISORY COMMITTEE ACT



***Presented to the
NASA Advisory Council***

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Background



- **Advisory committees to the Federal Government have a long and storied history**
 - George Washington/Whiskey Rebellion (1794)
 - Warren Commission/JFK
 - Three Mile Island Commission, 9/11 Commission, BRAC Commission
 - Presidential Commission on Implementation of U.S. Space Exploration Policy
 - Review of U.S. Human Space Flight Plans Committee
 - NASA Advisory Council, Aerospace Safety Advisory Panel
- **Today, approx. 1000 Federal advisory committees advise the Executive Branch, with over 60,000 committee members**
 - Approx. \$300M in annual expenses; 6700 meetings; 1000 reports
 - HHS, DOI, USDA, DOD, NSF, DOC: large no. of advisory committees
 - NASA's advisory committees have fluctuated, ranging from 2 – 26

What is a FACA Advisory Committee?



- **1972 Federal Advisory Committee Act (FACA) – Public Law 92-463**
 - Provide advice that is important, relevant, objective, open to public
 - Act promptly to complete work
 - Comply with reasonable cost controls and recordkeeping requirements
- **Established by Statute, the President or Federal agency, or “utilized” by the President or Federal agency**
 - To obtain advice or recommendations for the President or agency
 - Contains at least one non-Federal employee
- **“Good government” tradition (FOIA, Sunshine Act, Ethics, etc.)**

When Does FACA Apply?



5 Questions to Ask:

- Does the group provide collective advice?
- Who does the group advise?
- Who are the group's members?
- Who established the group?
- Who controls the group's activities?

General FACA Requirements



- Develop and file a charter with Congress
- Maintain a balanced membership
- Hold open public meetings
- Keep minutes or summaries of meetings
- Allow public filing of written statements
- Announce all meetings in Federal Register
 - 15 days in advance
- Maintain all committee documents for public inspection

What Must All FACA Committees Have?



Charter

- Top Federal Agency official determines that an advisory committee is essential to the performance of a duty or responsibility of that Agency
- Charter sets out committee mission/responsibilities/costs; typically with 2-year duration; automatically terminates unless renewed
- Agency Head approves/signs the Charter after GSA approval; then it is filed with Congress

GSA Approval

- The U.S. General Services Administration (GSA) is responsible for reviewing all proposed charters for FACA committees
- GSA manages Government-wide ceiling on FACA committees

What Must All FACA Committees Have?

CMO

- Each Federal Agency required to have an Advisory Committee Management Officer (CMO)
- Each Agency Head must appoint a senior official to this statutorily-mandated agency-wide position
- Role to provide management oversight of all Agency advisory committees, ensure FACA compliance, liaison/annual reporting to GSA
- Charters new FACA committees
- Signs all Federal Register notices (establishment/meetings)
- Works closely with Agency Office of General Counsel on ethics, financial disclosure issues
- Works closely with Agency Exec Dirs (DFO's) of advisory committees on policies, procedures, issues, annual reports

What Must All FACA Committees Have?



DFO

- Each FACA advisory committee must have a a Designated Federal Official (DFO) who:
 - Calls, attends and adjourns meetings
 - Works closely with advisory committee Chair
 - Prepares Federal Register notices for meetings, etc.
 - Approves agendas, press releases, etc.
 - Maintains required official records of committee, including minutes, membership and cost records
 - Maintains meeting records for availability to the public
 - Various titles used for DFO's (e.g., executive director, executive secretary, etc.) but responsibilities are the same

What Must All FACA Committees Have?

Members

- Membership must be “*fairly balanced*” with regard to points of view to be represented and the functions to be performed.
- Anyone can nominate members for advisory committee membership; Agency Head formally appoints them.
- Three types: “Special Government Employees” (SGE’s), “Representatives” and “Regular Government Employees”
- “SGE’s” and “RGE’s” serve as subject matter experts; must file required financial disclosure forms (450’s) for review by the DFO and Office of General Counsel.
- “Representatives” serve to represent official policies/views of a given sector; no requirement to file financial disclosure forms (450’s)
- Annual ethics training required for all SGE’s (one hour)

Why Does FACA Require Public Meetings?



Public Meetings

- Goals of the FACA statute include:
 - Reducing inappropriate influence on government decisions
 - Eliminating government decisions made behind closed doors
 - Improving public confidence in Agency decision-making
 - Allowing public contemporaneous access to decision process
 - Ensuring positive public perception of Executive Branch
 - “Good government”

Public Meetings – cont'd



- **FACA is a public access, not a public participation statute:**
 - All “deliberations” of a FACA advisory committee seeking to reach “consensus” on advice to be given to the Agency are to occur in a public meeting.
 - GSA says “consensus” requires a quorum:
 - Quorum equals 1/2 of number of members, plus 1
 - No requirement that “consensus” be reached in any particular public meeting; no requirement for voting.
 - Main objective is openness and accountability to the public.

Public Meetings – cont'd

To Assure Public Access:

- **Advance notice of meeting:** Time, location and agenda – must be published in the Federal Register at least 15 calendar days before the scheduled meeting.
- **Accessible meeting location:** Not required to accommodate all of the public.
- **Accessible committee information:** Includes detailed minutes and documents considered at each meeting. Posting committee information on website recommended. Minutes must be completed/certified NLT 90 days following meeting; sooner is better. Greater openness and transparency an Administration goal.
- **Public may submit documents/written statements:** Committee is free to use public input as it sees fit.
- **Virtual committee meeting deliberations (telecons/videocons/WebEx/web-streaming) are possible.** But must have public access, e.g., dial-in/meet-me line. Must have Federal Register notice.

Public Meetings – cont'd

“Closed Meetings” – Exemptions to FACA public meeting requirement (Government in the Sunshine Act)

- National defense/foreign policy matters, properly classified under E.O.
- Internal personnel rules/practices of an agency
- Matters specifically exempted by statute
- Trade secrets, commercial or financial information
- Criminal/investigatory matters
- Invasion of personal privacy
- Involve premature disclosure related to financial institutions
- Issuance of subpoenas or litigation strategy
- Closing a FACA meeting takes place under “Government in Sunshine Act” and must be planned well in advance. Must submit written request to Agency head 30 days in advance citing specific exemption in Sunshine Act., have reviewed by General Counsel. A written Agency final determination required, with public access to the determination.
- Above must be completed prior to publishing the required Federal Register meeting notice, and if all/any part of meeting is closed, it must cite the specific exemption.
- Rarely used at NASA

Public Meetings – cont'd

“Non-FACA Meetings” – Activities not subject to FACA. Meetings of two or more advisory committee/subcommittee members for:

- Administrative work
 - Discuss administrative matters (e.g., schedule, agendas, logistics)
 - Receive administrative info from Federal officer or agency
- Preparatory work
 - Solely to gather information, conduct research (fact-finding)
 - Analyze relevant issues and facts
 - Draft position papers for subsequent deliberation by the full advisory committee
 - Site visits and tours
- “Non-FACA meeting” determination memo required in advance for each non-FACA meeting
 - Prepared/signed by DFO, Office of General Counsel concurrence, ACMO approval
- No deliberations are allowed, no recommendations may be developed during non-FACA meetings. All deliberations/recommendations must occur during FACA meetings, in full public view.

Other Key FACA Regulations and Policies



GSA Federal Advisory Committee Management: Final Rule (41 CFR Parts 101-6 and 102-3)

- FACA implementing regulations and guidance
- GSA Government-wide policy and compliance role
- Handbook for Federal agencies on FACA management/operations

NASA Policy Directive: FACA Committees (NPD 1150.11)

- NASA-sponsored advisory committees operate in full compliance with FACA.
- NASA unchartered committees, subcommittees, task forces, etc., that report to a parent NASA FACA advisory group also will operate with same spirit of openness and public accountability as embodied in FACA (“FACA-like”).
- NASA advisory committees are solely advisory. Only NASA officials may determine Agency policy or direct Agency programs/actions.

Questions?



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